

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) CONNECTING SYSTEM FOR
SMOLENSKI et al.) TELESCOPINGLY ENGAGED
) ELEMENTS AND METHOD...
)
Serial No. 10/646,323) Examiner: Victor D. Batson
) Group Art Unit 3677
Filed: August 22, 2003) Confirmation No. 9692

PETITION TO REVIVE ABANDONED APPLICATION UNDER 37 CFR 1.137(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions to revive the above application. On April 28, 2010, a Notice of Abandonment was mailed, identifying the abandonment as "Applicant's failure to timely file a proper reply to the Office letter mailed on 04 October 2007". Based upon the facts as set forth hereinbelow and supported by the attached Declaration, the entire delay in filing the required reply from the due date to the present was unavoidable.

A Final Office Action was issued by Examiner Rodriguez on October 4, 2007.

On October 23, 2007, an in-person interview was conducted between the undersigned and Examiner Rodriguez, as summarized in the Amendment Under 37 CFR 1.116, filed on November 7, 2007. (See also paragraph 6, Declaration of John S.

Mortimer, hereinafter identified as "Declaration.") As stated in that Amendment, on page 22:

During the interview, the amendments to claim 1, as presented herein, were discussed. The Examiner agreed that claim 1, as presented herein, patentably distinguishes over the cited art.

On December 10, 2007, an Advisory Action was mailed, identifying the status of all pending claims, and indicating that the November 7, 2007 Amendment Under 37 CFR 1.116 "will not be entered" for purposes of appeal. It is further indicated that the proposed amendment "raise[s] new issues that would require further consideration and/or search."

As indicated in the attached Declaration, it was the understanding of the undersigned that the Examiner had agreed during the interview that the Amendment Under 37 CFR 1.116 placed the case in condition for allowance (see Declaration, paragraph 6).

Based upon this understanding, the undersigned called the Examiner to clarify why the Examiner had changed from her position at the interview and decided not to allow the application. As indicated in the attached Declaration, the undersigned made a call to Examiner Rodriguez on December 18, 2007, and a further call to Examiner Rodriguez on January 14, 2008 to ask for clarification (see Declaration, paragraph 9). The undersigned followed these calls with calls on January 16, 2008 to each of Examiner Rodriguez and her supervisor (see Declaration, paragraph 9).

On January 17, 2008, the undersigned had separate conferences with Examiner Rodriguez and her supervisor. It was agreed that with some minor

amendments, to be made by the Examiner, the case would be in condition for allowance (see Declaration, paragraph 9).

On April 3, 2008, on the eve of the statutory deadline for filing a response to the October 4, 2007 Final Office Action, the undersigned checked on-line at the PTO website regarding the status of the present application. Since no Notice of Allowance had been posted, on April 3, 2008, the undersigned called Examiner Rodriguez to make certain that the case would be allowed, as promised by the Examiner (see Declaration, paragraph 10).

On April 7, 2008, as a follow-up, the undersigned had a telephone conference with Examiner Rodriguez during which Examiner Rodriguez assured the undersigned that the case would be formally allowed (see Declaration, paragraph 10).

Not having received a Notice of Allowance, a written Status Inquiry was mailed on June 4, 2008. The Status Inquiry confirms that "the undersigned was advised over the telephone by the Examiner that the above application was allowed." No response was ever made in writing or otherwise by the Patent Office to this Status Inquiry in that time frame.

A separate Status Inquiry was filed on November 21, 2008, again noting that the Examiner had indicated over the telephone that the application was allowed and requesting a statement of status. No communication, in writing or otherwise, was received from the Patent Office in that time frame.

On January 20, 2009, a further Status Inquiry was mailed, with no response received from the Patent Office in that time frame.

On April 29, 2009, a voice mail message was left from an Examiner. Per the attached Declaration (paragraph 11), it is the undersigned's recollection that the message was from Examiner Rodriguez. No indication was given that there was any problem with the application.

The undersigned made calls to Examiner Rodriguez's number and left messages to ask the Examiner to clarify status. Separate calls were made on: June 1, 2009; June 25, 2009; July 13, 2009; August 17, 2009; and October 1, 2009 (see Declaration, paragraph 12).

On December 28, 2009, a call was made to one of the Examiner's Supervisors noted in a PTO communication (see Declaration, paragraph 13). The undersigned's recollection is that the Examiner had not been supervising Examiner Rodriguez for some time and could not provide any assistance in the case.

After further inquiry as to the identification of Examiner Rodriguez's supervisor, the undersigned was able to identify Examiner Batson and called Examiner Batson on January 4, 2010 to explain the history of this case and request clarification as to status (see Declaration, paragraph 14).

On March 2, 2010, the undersigned had a discussion with Examiner Batson regarding this case (see Declaration, paragraph 14). It is the undersigned's recollection that at that time Examiner Batson advised the undersigned that Examiner Rodriguez was no longer with the Patent Office. Examiner Batson agreed to do further investigation.

On April 28, 2010, a Notice of Abandonment was sent from Examiner Batson. In the Notice of Abandonment, it is indicated that the Notice responds to the

three earlier Status Inquiries. The Notice of Abandonment indicates in Item 7 that Examiner Batson investigated the history of this case. The Notice of Abandonment further indicates that a review of Examiner Rodriguez's files was conducted. As stated, "A review of the record does not indicate that an interview took place, that an agreement was reached or that an allowance was indicated."

The undersigned recorded in a diary on October 23, 2007 the fact that the interview was conducted by telephone on that date with Examiner Rodriguez. That entry further indicates that an Amendment was submitted to Examiner Rodriguez on that date for preliminary review. This Amendment was ultimately filed on November 7, 2007, and specifically references the interview.

It is respectfully submitted that the undersigned acted reasonably in relying upon Examiner Rodriguez's repeated assurances that, without any further submission on Applicant's part following the November 7, 2007 Amendment Under 37 CFR 1.116, the application would be formally allowed. All communications from Examiner Rodriguez were consistent that the case would be allowed. Each of the Status Inquiries submitted by the Applicant sets forth the Applicant's understanding that the application would be allowed. None of the status inquiries was responded to until the Notice of Abandonment was mailed by Examiner Batson on April 28, 2010. The Notice of Abandonment was mailed only after the undersigned was able to identify Examiner Batson and obtain his assistance in investigating the history of this case.

Applicant respectfully submits that the facts set forth above clearly demonstrate that the entire delay in filing the required reply from the due date to the present was unavoidable.

Applicant is submitting herewith a Reply to the October 4, 2007 Final Office Action, which reply includes a Request for Continued Examination and the un-entered Amendment Under 37 CFR 1.116, filed on November 7, 2007.

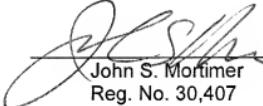
Applicant also encloses the Petition fee of \$540.00 under 37 CFR 1.17(l).

It is respectfully requested that the Petition be granted.

Respectfully submitted,

WOOD, PHILLIPS, KATZ,
CLARK & MORTIMER

By



John S. Mortimer
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Dated: May 27, 2010

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